

B

**BEFORE THE  
BOARD OF PSYCHOLOGY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

DONALD K. SMITH, Ph.D.  
333 City Boulevard West, #1235  
Orange, California 92668

Psychology License No. PSY 11278

Respondent.

Case No. W162

OAH No. L-2000020162

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Psychology of the Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on November 14, 2001.

It is so ORDERED October 15, 2001.

*MAG Leong*  
FOR THE BOARD OF PSYCHOLOGY  
DEPARTMENT OF CONSUMER AFFAIRS

Attachment: Stipulated Settlement and Disciplinary Order

1 BILL LOCKYER, Attorney General  
of the State of California  
2 DOUGLAS MACCARTEE, State Bar No. 77252  
Deputy Attorney General  
3 California Department of Justice  
110 West "A" Street, Suite 1100  
4 San Diego, California 92101

5 P.O. Box 85266  
San Diego, California 92186-5266  
6 Telephone: (619) 645-2072  
Facsimile: (619) 645-2961

7 Attorneys for Complainant  
8  
9

10 **BEFORE THE**  
**BOARD OF PSYCHOLOGY**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 DONALD K. SMITH, Ph.D.  
14 333 City Boulevard West #1235  
Orange, California 92668

15 Psychology License No. PSY 11278  
16

17 Respondent.  
18

Case No. W 162  
OAH No. L 2000020162

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the  
20 above-entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Complainant Thomas O'Connor is the Executive Officer of the Board of  
23 Psychology who brought this action solely in his official capacity and is represented in this  
24 matter by Bill Lockyer, Attorney General of the State of California, by Douglas MacCartee,  
25 Deputy Attorney General.

26 2. Respondent is represented by and through his attorney, Pamela Ann  
27  
28

1 Thatcher, Inc., by Pamela Thatcher.

2 3. On or about August 1, 1989, the Board of Psychology issued Psychology  
3 License No. PSY 11278 to Donald K. Smith, Ph.D. ("Respondent"). The license is in full force  
4 and effect and will expire on December 31, 2002, unless renewed.

5 JURISDICTION

6 4. Accusation, No. W 162, was filed before the Board of Psychology  
7 ("Board "), and together with all other statutorily required documents, was duly served on  
8 Respondent on or about April 6, 1999. The Second Amended Accusation, together with all  
9 other statutory required documents, was duly served on Respondent on or about September 14,  
10 2000. A copy of the Second Amended Accusation No. W 162 is attached as Exhibit A and  
11 incorporated herein by reference.

12 ADVISEMENT AND WAIVERS

13 5. Respondent has carefully read and fully understands the nature of the  
14 charges and allegations in the Second Amended Accusation and the effects of this Stipulated  
15 Settlement and Disciplinary Order.

16 6. Respondent and his counsel are aware of each of respondent's rights,  
17 including the right to a hearing on the charges and allegations, the right to confront and cross-  
18 examine witnesses who would testify against respondent, the right to present evidence in his  
19 favor and call witnesses on his behalf, or to testify, his right to contest the charges and  
20 allegations, and other rights which are accorded to respondent pursuant to the California  
21 Administrative Procedure Act (Gov. Code, § 11500 et seq.), including the right to seek  
22 reconsideration, review by the superior court, and appellate review.

23 7. Respondent voluntarily, knowingly and intelligently waives and gives up  
24 each and every right set forth above.

25 CULPABILITY

26 8. Respondent understands that the charges and allegations in the Second  
27  
28

Amended Accusation, if proven at a hearing, constitute cause for imposing discipline upon his Psychology License.

9. For the purpose of resolving Accusation No. W162, a copy of which is attached hereto as **Exhibit A**, and the current or past investigations concerning respondent and C. B. (1F 2001-117768); S. I. (1F-2000-116088); J. H. (1F1999-102845), respondent admits that at a hearing the complainant could prove at least a prima facie case to charges alleged in Exhibit A, and that respondent has thereby subjected his Psychologist's License No. PSY 11278 to disciplinary action.

10. Respondent agrees to be bound by the Board's imposition of discipline as set forth in the Order below.

#### RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

#### CONTINGENCY

12. This stipulation shall be subject to the approval of the Board. Respondent understands and agrees that Board of Psychology's staff and counsel for Complainant may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. If the Board fails to adopt this stipulation as its Order, except for this paragraph the Stipulated Settlement and Disciplinary Order shall be of no force or effect, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action in this matter by virtue of its consideration of this stipulation.

13. The parties agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as original Stipulated Settlement and Disciplinary Order and signatures.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board shall, without further notice or formal proceeding, issue and enter the

1 following Disciplinary Order:

2 **DISCIPLINARY ORDER**

3 **IT IS HEREBY ORDERED** that Psychology License, No. PSY 11278 issued to  
4 Respondent Donald K. Smith, Ph.D. is revoked. However the revocation is stayed and  
5 Respondent is placed on probation for five (5) years on the following terms and conditions.

6 A. **COURSE WORK**

7 Respondent shall take and successfully complete not less than 18 hours of  
8 combined pre-approved course work each 12 month period of probation, in the following  
9 areas: Evidence Code § 730 Child Custody and Juvenile Court evaluation and  
10 mediation; ethics; or, any other course deemed appropriate and approved by the Board  
11 and/ or it's designee. All course work shall be taken at the graduate level at an  
12 accredited educational institution or by an approved continuing education provider.  
13 Classroom attendance is specifically required; correspondence or home study course  
14 work shall not count toward meeting this requirement. The course work must be in  
15 addition to any continuing education courses that may be required for license renewal.

16 Within 90 days of the effective date of this Order, respondent shall submit to the  
17 Board or its designee for its prior approval a plan for meeting the educational  
18 requirements. All costs of the course work shall be paid by the respondent.

19 B. **EDUCATIONAL REVIEW**

20 Within 90 days of the effective date of this Order, respondent shall submit to and  
21 successfully complete an Educational Review concerning the circumstances which  
22 resulted in this administrative action. The educational review shall be conducted by a  
23 Board appointed expert case reviewer and / or Board designee familiar with this case.  
24 Educational reviews are informational only and intended to benefit respondent's practice  
25 by preventing future such complaints. Respondent shall pay the fee and costs at the then  
26 going rate of the appointed reviewer and any other cost of the review.

1 C. COST RECOVERY

2 The respondent is hereby ordered to pay to and reimburse the Board in the amount  
3 of \$15,000.00 not later than two years ( half the 1<sup>st</sup>/ half the 2d) from the effective date of  
4 this Order, for its investigative and prosecution costs. Such costs shall be payable to the  
5 Board of Psychology. Failure to pay such costs shall be considered a violation of  
6 probation. The filing of bankruptcy by the respondent shall not relieve the respondent of  
7 his responsibility to repay investigation and prosecution enforcement costs.

8 D. PROBATION COSTS

9 Respondent shall pay the costs associated with probation monitoring each and  
10 every year of probation, which are currently set at \$2,100, but may be adjusted on an  
11 annual basis. Such costs shall be payable to the Board of Psychology at the end of each  
12 fiscal year (July-June 30). Failure to pay costs within 30 days of the due date shall  
13 constitute a violation of probation.

14 E. OBEY ALL LAWS

15 Respondent shall obey all federal, state and local laws, all rules  
16 governing the practice of medicine in California, and remain in full compliance with any  
17 court ordered criminal probation, payments and other orders.

18 F. QUARTERLY REPORTS

19 Respondent shall submit quarterly declarations under penalty of perjury on  
20 forms provided by the Board or its designee, stating whether there has been compliance  
21 with all the conditions of probation.

22 G. PROBATION COMPLIANCE

23 Respondent shall comply with the Board's probation program and shall,  
24 upon reasonable notice, report to the assigned District Office of the Medical Board of  
25 California or other designated probation monitor. Respondent shall contact the assigned  
26 probation officer regarding any questions to the probation order. Respondent shall not  
27 have any unsolicited or unapproved contact with 1) complainants associated with the  
28

1 case; 2) Board members or members of its staff; or 3) persons serving the Board as  
2 expert witnesses.

3 H. INTERVIEW WITH THE BOARD, OR ITS DESIGNEE OR ITS  
4 PSYCHOLOGISTS

5 Respondent shall appear in person for interviews with the Board, its designee  
6 upon request at various intervals and with reasonable notice.

7 I. CHANGES OF EMPLOYMENT

8 Respondent shall notify the Board in writing, through the assigned probation  
9 officer, of any change of employment, location, and address within 30 days of such  
10 changes.

11 J. TOLLING FOR OUT-OF-STATE PRACTICE, RESIDENCE  
12 OR IN-STATE NON-PRACTICE

13 In the event respondent should leave California to reside or to practice outside the  
14 State or for any reason should respondent stop practicing psychology in California,  
15 respondent shall notify the Board or its designee in writing within ten (10) days of  
16 the dates of departure and return or the dates of non-practice within California. Non-  
17 practice is defined as any period of time exceeding thirty (30) days in which  
18 respondent is not engaging in any activities defined in Sections 2902 and 2903 of the  
19 Business and Professions Code. Periods of temporary or permanent residence or  
20 practice outside California or of non-practice within California will not apply to the  
21 reduction of the probationary period, although the Board may allow respondent to c  
22 complete certain terms of probation that are not associated with active practice.

23 K. EMPLOYMENT AND SUPERVISION OF TRAINEES

24 If respondent is licensed as a psychologist, he/she shall not employ or supervise or  
25 apply to employ or supervise psychological assistants, interns or trainees during the  
26 course of this probation. Any such supervisorial relationship in existence on the effective  
27 date of this probation shall be terminated by respondent and/or the Board.  
28

1 L. VIOLATION OF PROBATION

2 If respondent violates probation in any respect, the Board after giving  
3 respondent notice and the opportunity to be heard, may revoke probation and carry out the  
4 disciplinary order that was stayed. If an accusation or petition to revoke probation is filed  
5 against respondent during probation, the Board shall have continuing jurisdiction until  
6 the matter is final, and the period of probation shall be extended until the matter is final.

7 M. COMPLETION OF PROBATION

8 Upon successful completion of probation, respondent's certificate shall be fully  
9 restored.

10 N. LICENSE SURRENDER

11 Following the effective date of this decision, if respondent ceases  
12 practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and  
13 conditions of probation, respondent may voluntarily tender his certificate to the Board.  
14 The Board reserves the right to evaluate the respondent's request and to exercise  
15 its discretion whether to grant the request, or to take any other action deemed appropriate  
16 and reasonable under the circumstances. Upon formal acceptance of the tendered  
17 license, respondent will not longer be subject to the terms and conditions of probation.

18 ACCEPTANCE

19 I have carefully read and fully understand the stipulation and orders set forth  
20 above. I have discussed the terms and conditions set forth in the Stipulation in Settlement for  
21 Order with my attorney, Pamela A. Thatcher. I understand that in signing this stipulation I am  
22 waiving my right to a hearing on the charges set forth in the Second Amended Accusation W162,  
23 Exhibit A hereto. I further understand that in signing this stipulation the Board Division may  
24 enter the foregoing order placing certain requirements, restrictions and limitations on my right to  
25 practice psychology in the State of California.

26 DATED: August 14, 2001

27   
28 DONALD K. SMITH, Ph.D.  
Respondent



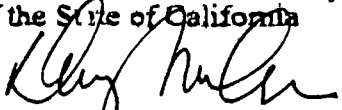
I have reviewed and advised my client on the Stipulation in Accusation No: W162. I concur in the Stipulation.

DATED: AUGUST 14, 2001

  
PAMELA ANN THATCHER  
Attorney for Respondent

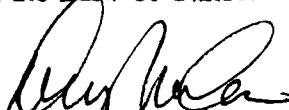
I have reviewed and advised my client on the Stipulation in Accusation No: W162. I concur in the Stipulation.

DATED: AUGUST 30, 2001

BILL LOCKYER, Attorney General  
of the State of California  
  
DOUGLAS MACCARTEE  
Deputy Attorney General  
Attorney for Complainant

ENDORSEMENT

The foregoing Stipulation in Settlement for Order in Accusation No: W162 is hereby respectfully submitted for consideration of the Chief of Enforcement of the Board or his designee.

BILL LOCKYER, Attorney General  
Of the State of California  
  
DOUGLAS MACCARTEE  
Deputy Attorney General  
Attorney for Complainant

Attachment: Exhibit A: Second Amended Accusation No. W162  
8/10/01

**EXHIBIT A**  
(Second Amended Accusation)

1 BILL LOCKYER, Attorney General  
of the State of California  
2 DOUGLAS MACCARTEE [State Bar No. 77252]  
Deputy Attorney General  
3 California Department of Justice  
110 West A Street, Suite 1100  
4 Post Office Box 85266  
San Diego, California 92186-5266  
5 Telephone: (619) 645-2072

6 Attorneys for Complainant

7 **BEFORE THE**  
8 **BOARD OF PSYCHOLOGY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

11 DONALD K. SMITH, Ph.D.  
12 333 City Boulevard West, #1235  
Orange, California 92668

13 Psychologist's License No. PSY 11278

14 Respondent.  
15

NO : W162  
OAH NO: L20000020162

**SECOND AMENDED**  
**ACCUSATION**

16 Complainant Thomas S. O'Connor, who as cause for disciplinary action, alleges:

17 **PARTIES**

18 1. Complainant is the Executive Officer of the California State Board of  
19 Psychology ("Board") and makes and files this accusation solely in his official capacity.

20 **License Status**

21 2. On or about August 1, 1989, Psychologist's License No. PSY 11278 was  
22 issued by the Board to Donald K. Smith, Ph.D. ("respondent"), and at all times relevant herein,  
23 said Psychologist's License was, and currently is, in full force and effect. Said license is renewed  
24 until December 31, 2000.

25 **JURISDICTION**

26 3. This accusation is made in reference to the following statutes of the  
27 California Business and Professions Code ("Code"):

28 ///

1           A.     Section 2960 of the Code provides that the Board may order the  
2 suspension for a period not exceeding one year, or the revocation of, or the imposition of  
3 probationary conditions upon the license of any licensee who has been guilty of  
4 unprofessional conduct. Unprofessional conduct shall include, but is not limited to, the  
5 grounds set forth in the subdivisions of this section.

6           B.     Section 2960, subdivision (i) of the Code provides that a ground of  
7 discipline against a licensed psychologist is violation of any rule of professional conduct  
8 promulgated by the Board and as set forth in regulations duly adopted.

9           C.     Section 2960, subdivision (j), of the Code provides that a ground  
10 of discipline against a licensed psychologist is being grossly negligent in the practice of  
11 his or her profession.

12           D.     Section 2960, subdivision (n), of the Code provides that a ground  
13 of discipline against a licensed psychologist is the commission of any dishonest, corrupt  
14 or fraudulent act.

15           E.     Section 2960, subdivision (q), of the Code provides that a ground  
16 of discipline against a licensed psychologist is functioning outside of his or her particular  
17 field of fields of competence as established by his or her education, training, and  
18 experience.

19           F.     Section 2960, subdivision (s), of the Code provides that a ground  
20 of discipline against a licensed psychologist is repeated acts of negligence in the practice  
21 of his or her profession.

22           G.     Section 125.3 of the Code provides, in part, that the Board may  
23 request the administrative law judge to direct any licensee found to have committed a  
24 violation or violations of the licensing act, to pay the Board a sum not to exceed the  
25 reasonable costs of the investigation and enforcement of the case.

26           H.     California Administrative Code, Title 16, ch. 13, § 1396.2, as  
27 adopted by Code section 2960(i), provides in pertinent part, that a psychologist shall not  
28 knowingly under take or continue a client relationship when the psychologist's own

1 personality may interfere with his ability to maintain sound interpersonal relations with  
2 the client or distort his appraisals of others.

3 I. California Administrative Code, Title 16, ch. 13, § 1396.2, as  
4 adopted by Code section 2960 (i), provides in pertinent part, that a psychologist shall not  
5 misrepresent nor permit the misrepresentation of his or her professional qualifications,  
6 affiliations, or purposes, or those of the institutions, organizations, products and/or  
7 services with which he or she is associated.

8 J. California Administrative Code, Title 16, ch. 13, § 1397.1, as  
9 adopted by Code section 2960 (i), provides in pertinent part, that the failure of a  
10 psychologist to comply with the reporting requirements contained in Penal Code § 11166,  
11 shall constitute unprofessional conduct.

12 **FIRST CAUSE FOR DISCIPLINE**

13 (Gross Negligence)

14 Patient: Linda A.(aka "Ms. A")

15 4. Respondent Donald K. Smith, Ph.D., is subject to disciplinary action on  
16 account of the following:

17 A. On or about December 5, 1987, in a matter before the Superior  
18 Court of the State of California for the County of Orange, Case No. D 269374, the court  
19 ordered a joint child custody arrangement where under Ms. A. had physical custody of  
20 Austin A., then 4 years old, with Mr. A. having custody of the child on alternating  
21 weekends. Mr. and Mrs. A. had married on August 21, 1982; were separated December  
22 15, 1983; and subsequently had their marriage dissolved in 1988.

23 B. In or about January of 1995, at the request of Mr. A., the court  
24 ordered a child custody evaluation regarding Austin A., who was by then 11 years old,  
25 pursuant to California Evidence Code section 730<sup>1/</sup>. Respondent was appointed by the court to  
26

---

27 1. Cal. Evid. Code, §730 provides:

28 "When it appears to the court, at any time before or during the trial of an action,  
that expert evidence is or may be required by the court or by any party to the

1 be the evaluator.

2 C. Between about November 9, 1994, and February 17, 1995,  
3 respondent saw Mr. A. & Mrs. A., Ms. A. (Linda A), and Austin A., individually and  
4 together in various combinations, on a total of 10 occasions, in furtherance of the  
5 Evidence Code section 730 evaluation. During those office visits, respondent conducted  
6 clinical intake, observation, interviews, and psychological testing.

7 D. On or about May 2, 1995, respondent submitted a 38-page letter  
8 report to the court. The report submitted the results of respondent's Evidence Code  
9 section 730 evaluation regarding custody of Austin A. Respondent wrote in the report:

10 (1) "Ms. A.<sup>2</sup> appears not only dependent but extremely  
11 obsessive-compulsive." (Evid. Code, §730 Report, 5/2/95, p. 36.)

12 (2) "It appears, to a marked degree, Ms. A. has initiated this  
13 pathological relationship between father and son, as Ms. A. appears to have  
14 nobody else but her son." (*Ibid.*)

15 (3) "With grave reservation, I am suggesting Austin to  
16 maintain with his mother only under the condition that she seek individual  
17 psychotherapy with either a psychologist or psychiatrist. Ms. A. appears to be  
18 internalizing intense anxiety and hostility toward her former husband, and is  
19 projecting this over to Austin....there appears absolutely and unequivocally no

---

20  
21 action, the court on its own motion or on motion of any party may appoint one or  
22 more experts to investigate, to render a report as may be ordered by the court, and  
23 to testify as an expert at the trial of the action relative to the fact or matter as to  
24 which the expert evidence is or may be required. The court may fix the  
25 compensation for these services, if any, rendered by any person appointed under  
26 this section, in addition to any service as a witness, at the amount as seems  
27 reasonable to the court.

28 "Nothing in this section shall be construed to permit a person to perform any act  
for which a license is required unless the person holds the appropriate license to  
lawfully perform that act."

2. Respondent distinguishes between Ms. A., who is the biological mother of  
Austin, and Mrs. A., who is the new wife of Mr. A. In this Accusation, except for quoted  
sections of respondent's reports, the biological mother is termed "Ms. A." or "Linda A."

1 question, for this child to "hate" his father with the level of intensity and  
2 animosity he feels at this time, that Ms. A.'s either verbal or non-verbal  
3 communique being sent to Austin regarding her relationship with her former  
4 husband, is most certainly contaminating the relationship, significantly, between  
5 father and son." (*Ibid.*, p. 37; emphasis in original.)

6 (4) "... Ms. A. needs either a licensed psychologist (clinical)  
7 or psychiatrist for individual treatment. If Ms. A. does not follow these  
8 suggestions, then absolutely and unequivocally, Austin to be in the physical  
9 custody of his father, with Ms. A. having monitored contact with her son, Austin."  
10 (*Ibid.*; emphasis in original.)

11 (5) "If Ms. A. continues to make unilateral decisions regarding  
12 the contact between father and son, then Austin to be in the immediate custody of  
13 his father, and any contact then between mother and child is to be monitored or  
14 supervised." (*Ibid.*)

15 (6) "[T]his woman [Austin's biological mother] in actuality  
16 appears extremely compulsive and, in that light, controlling and dictatorial!"  
17 (*Ibid.*, p. 38.)

18 (7) "There was a rumor going around that Dr. Soltani had  
19 mentioned Ms. A. was psychotic. I called Dr. Soltani to confirm his impression  
20 of Ms. A., and Dr. Soltani noted that he had made no such diagnostic impression,  
21 as his role was directed with specificity toward only giving impressions as to  
22 whether these people were drug and/or alcohol dependent." (*Ibid.*, p. 18.)

23 E. On or about July 25 and August 21, 1995, respondent conducted  
24 two mediation sessions with Mr. A. and Ms. A. on the issue of summertime visitation  
25 schedules with their son, Austin. In one session, respondent asked Ms. A. whether she  
26 thought he, respondent, was doing an adequate job. In response, Ms. A. expressed  
27 concerns that in previous contacts respondent had failed to obtain information, had failed  
28 to report certain facts, had accused her of alienating the other parent, had reprimanded

1 and threatened her, and had acted generally biased against her. At that point, respondent  
2 asked Ms. A. whether she was going to "report" him and stated that his wife is an  
3 attorney.

4 F. On or about August 31, 1995, respondent submitted an 8-page  
5 "Mediation Report" to the court. Respondent wrote in the report:

6 (1) "... Ms. A. has to be one of the most frustrating women I  
7 have ever attempted to work with in my 22 years as a mental health professional.  
8 She is absolutely and unequivocally one of the most rigid, dogmatic, stubborn,  
9 and headstrong individuals I have ever met as a mental health professional. She  
10 also utilizes projection (significantly), lacks markedly, to say the least, in self-  
11 introspection, and appears not to have the ability to garnish anything from her  
12 previous experiences." (Mediation Report, 8/31/95, p. 1.)

13 (2) "I also noted to Ms. A. during one of our meetings that if  
14 she did not schedule an appointment with a psychologist, that I would personally  
15 see this as an oppositional act on her part, and recommend to the court that Austin  
16 be immediately in the care, custody, and control of his father." (*Ibid.*, p. 4.)

17 (3) "... I cautioned Ms. A. that if I did not hear from a  
18 psychologist who was treating her in one week, that I would noted (sic) to the  
19 court an immediate change of custody, and her contact with Austin would then be  
20 monitored." (*Ibid.*)

21 (4) "It appears unquestionably that Ms. A. is going to hold  
22 steadfast, literally steadfast, to whatever the court says. She is not willing to  
23 bend, be flexible, or in any way modify the court order, even though that might be  
24 in the "best interests" of her son. . . . My perspective is that Ms. A. has such a  
25 pathological enmeshment with Austin that to in any (sic) separate the two at this  
26 immediate time would be analogous to Ms. A. suffocating. Ms. A.'s lifeline  
27 appears literally to be a direct link from her to Austin. Without Austin, Ms. A.  
28 appears to have nothing!!! (*Ibid.*, p. 7.)



1 (5) "I am going to ask for a re-evaluation of this matter,  
2 January, 1996." (*Ibid.*)

3 (6) "When dictating this letter, and then reading the same, it  
4 may appear I have picked on Ms. A. unmercifully. It was not meant to be that  
5 way - but, the reality of the situation is as expressed here." (*Ibid.*, emphasis in  
6 original.)

7 G. On or about January 5, 1996, respondent wrote a letter to the  
8 attorneys representing Mr. A. and Ms. A., in which respondent requested a complete  
9 reevaluation of their clients. Thereafter, on or about April 11, 1996, the court ordered  
10 Mr. A. and Ms. A. to submit to a custody/visitation reevaluation with respondent.  
11 Respondent subsequently met with (1) Mr. A. and his new wife (whom Mr. A. had  
12 married in August of 1994), (2) Austin and his attorney, and (3) Ms. A. and her attorney.  
13 Subsequently, in a conversation with the attorney for Ms. A., respondent made an  
14 allusion to Ms. A.'s weight.

15 H. On or about July 12, 1996, respondent submitted to the court an  
16 Evidence Code section 730 report of his reevaluation of the parties. In the report,  
17 respondent states:

18 (1) "It appears evident from the collateral information, and  
19 Austin's comments to me, that Ms. A. is either covertly and/or overtly attempting  
20 to subtrifuge (sic) the relationship between father and son. (Evid. Code, §730  
21 reevaluation, p. 6.)

22 (2) "It would appear Austin's relationship with his mother  
23 appears pathological." (*Ibid.*)

24 I. Respondent failed to obtain any further psychological test data to  
25 substantiate a change in diagnosis to that of any "pathological" relationship between  
26 Mrs. A. and Austin, as reported in the Evidence Code section 730 report of reevaluation  
27 dated July 12, 1996. Respondent failed to inquire or report on essential issues concerning  
28 the best interest of the minor and the truth of the relationship of the minor to his parents.

1 Respondent went to great lengths to cast Linda A. in a negative light, all to her prejudice  
2 before the court.

3 J. In his reevaluation, respondent recommended that physical custody  
4 of Austin be changed to his father, Mr. A. (*Ibid.*, p. 7.)

5 K. On or about October 17, 1996, on the court's own motion,  
6 respondent was relieved as the Evidence Code section 730 expert evaluator in the matter.

7 L. On or about October 23, 1997, respondent wrote a letter with  
8 attached exhibits, to the Medical Board of California's Central Complaint and  
9 Investigative Control Unit, in which respondent stated: "I never threatened Ms. A."

10 M. On or about October 23, 1997, respondent wrote a letter to the  
11 Medical Board of California's Central Complaint and Investigative Control Unit, in  
12 which respondent attached as exhibit "A" copies of two business licenses as follows:

13 "Regarding the allegation that I am practicing in Orange County without a  
14 business license, attached hereto as Exhibit "A" are copies of my 3/96-3/97  
15 license and 3-97/3-98 license."

16 5. Respondent has been grossly negligent in the practice of his profession, in  
17 violation of Code section 2960, subdivision (j), as more particularly set forth hereinafter:

18 A. Complainant re-alleges paragraph 4, subparagraph's A-K, in its  
19 entirety at this point.

20 B. Respondent committed an extreme departure or extreme departures  
21 from the ordinary standard of practice for a psychologist, in that:

22 (1) Respondent became biased and prejudice against Linda A.  
23 Throughout the process of a first evaluation, then mediation and the a second  
24 evaluation, respondent issued reports to the court in a highly unprofessional,  
25 irrational, unfounded, and threatening manner. The reports deceptively reported or  
26 failed to report essential facts, drawing irrational and unsupportable conclusions,  
27 which respondent insisted the court should follow as a matter of settled fact.

28 ///

1 (2) In his Evidence Code section 730 report of May 2, 1995,  
2 respondent made a statement that was damaging to Linda A. when respondent  
3 repeated a rumor that Dr. Soltani had mentioned Linda A. was "psychotic." The  
4 statement demonstrated a bias or lack of objectivity by respondent. Furthermore,  
5 the statement was determined by respondent to be false and unfounded by any  
6 objective or credible evidence, before the report was written; and respondent  
7 knew the inclusion of such a "rumor" not necessary as support for respondent's  
8 report.

9 (3) Respondent had a dual relationship with the A. family, in  
10 that:

11 (a) Respondent conducted a child custody evaluation in  
12 a case where respondent served in a therapeutic role for the child or his or  
13 her immediate family or had involvement that may compromise a  
14 psychologist's objectivity.

15 (b) Respondent involved himself in the case when he  
16 served as mediator and demonstrated a compromise of his objectivity  
17 toward Linda A.

18 (c) Respondent went from custody evaluator, to  
19 mediator, back to custody re-evaluator.

20 (4) Respondent used strong words and emphasized phrases  
21 regarding Linda A. that revealed a strong negative opinion toward her from the  
22 first evaluation.

23 (5) Respondent submitted a evaluation and mediation reports  
24 to the court which was laced with disparaging, pejorative, and prejudicial  
25 comments about Linda A., and did so without foundation.

26 (6) Respondent submitted a mediation report to the court in  
27 which he engaged in threats to the custodial status of Linda A. Respondent had  
28 been overly specific in his requiring Linda A. to see a psychologist, not a

1 marriage, family and child counselor (MFCC). This caused Linda A. to feel  
2 threatened, intimidated, and reprimanded, in that she had been seeing an MFCC.  
3 Respondent's requirement that Linda A. see a "psychologist" had not been made a  
4 requirement by the court. Respondent threatened the ultimate consequences for  
5 noncompliance with his dictates.

6 (7) Respondent submitted a mediation report to the court in  
7 which he personalized his involvement in the case, stating he would "personally  
8 see" her noncompliance in scheduling an appointment with a licensed  
9 psychologist as an "oppositional act" by Mrs. A.

10 (8) Respondent failed, in his report or reports, to inform and to  
11 advise the court and the prospective custodians of the child, in a balanced,  
12 impartial manner, of the relevant psychological factors pertaining to the custody  
13 issues, in that:

14 (a) Respondent's mediation report is neither balanced  
15 nor impartial.

16 (b) Respondent's actions, set forth in the mediation  
17 report, constitute punitive and inflexible behaviors by respondent.

18 (c) Respondent issued numerous threats to terminate  
19 the custodial status of Mrs. A. for reasons that were unrelated to her ability  
20 to function as a parent, reasons that reflected respondent's own anger and  
21 frustration with Mrs. A.

22 (d) Respondent unreasonably and in a biased fashion  
23 threatened to recommend termination of Mrs. A.'s custodial status unless  
24 she immediately scheduled an appointment with a licensed psychologist, a  
25 task which was dependent not only upon actions by Mrs. A., but also upon  
26 insurance coverage and upon the schedule of the psychologist.

27 (9) Respondent requested an Evidence Code section 730  
28 reevaluation and offered himself as the evaluator four months after acting as, and

1 then submitting, his mediation report to the court.

2 (10) Respondent failed to inquire or evaluate as to confirmed,  
3 multiple acts of child abuse (kicking minor) by Mr. A. upon Austin A., or  
4 to inquire and evaluate as to the effects of such acts upon Austin A., who  
5 respondent actually knew did not want to be placed with Mr. A.; respondent failed  
6 to comply with Penal Code § 11166.

7 (11) Respondent failed to inquire or evaluate strong evidence of  
8 physical abuse and/or violent sex crimes perpetrated by Mr. A directed towards  
9 adult females, in and out of the home.

10 (12) Respondent failed to inquire or follow-up on the known  
11 alcoholic nature of Mr. A and his admission that he continues to drink, or the  
12 effect of such known status on Austin A., who respondent knew did not want to  
13 be placed with Mr. A.

14 (13) Respondent failed to assess or inquire of the morals,  
15 parenting and rationale conduct issues presented by Mr. A's personal  
16 involvement, as a high school teacher, with his female student who began living  
17 with respondent shortly after attaining legal majority.

18 (14) Because of respondent personal dislike of Linda A.,  
19 respondent failed to objectively the balance the known stable and credible results  
20 of Austin A while in the sole physical custody of Linda A., including three (3)  
21 years academic performance in GATE, social and athletic involvement, in a non-  
22 drinking and productive environment in which the minor, Austin A., was secure  
23 and happy prior to the instigation of custody proceedings which respondent knew  
24 were actually brought forward by Mr. A's new wife, not Mr. A.

25 (15) Respondent used improper tests to derive personality  
26 descriptions for Linda A.; and, used irrational and improper "clinical  
27 observations" or "collateral material" to over-ride objective criteria in issuing the  
28 ///

1 prejudicial, unethical and unfounded descriptions attributed to Linda A., which  
2 carried into the reports to the court.

3 (16) Respondent, without any objective basis required Linda A.  
4 to submit to and pay for an alcohol/drug abuse evaluation by Dr. Soltani, which  
5 constituted an unwarranted hardship on her, a waste of client funds, and which  
6 resulted in respondent including in his report to the court, a highly prejudicial and  
7 unfounded "rumor" that Linda A. was "psychotic."

8 **SECOND CAUSE FOR DISCIPLINE**

9 (Commission of any Dishonest, corrupt or fraudulent act)

10 6. Respondent has been dishonest, corrupt or fraudulent in the practice of his  
11 profession, in violation of Code section 2960, subdivision (n), a more particularly set forth  
12 hereinafter:

13 A. Complainant realleges paragraphs 4 and 5 in their entirety at this  
14 point.

15 B. Respondent committed acts of dishonesty, corruption or fraud in  
16 that :

17 (1) On or about October 23, 1997, respondent wrote a letter to  
18 the Medical Board of California's Central Complaint and Investigative Control Unit, in  
19 response to allegations by Linda A., in which respondent stated :

20 "I never threatened Ms. A."

21 This statement was made to deceive the Board and to falsely attack the accuracy and  
22 credibility of the complaining witness, Linda A.

23 (2) On or about October 23, 1997, respondent wrote a letter to  
24 the Medical Board of California's Central Complaint and Investigative Control Unit, in  
25 response to allegations by Linda A., in which respondent attached as exhibit "A," copies  
26 of two business licenses and stated as follows:

27 ///

28 ///

1 "Regarding the allegation that I am practicing in Orange County without a  
2 business license, attached hereto as Exhibit "A" are copies of my 3/96-3/97  
3 license and 3-97/3-98 license."

4 The above statement of respondent to the Board and the attached licenses in exhibit "A"  
5 dishonest, corrupt and false in that respondent knew the allegation of practicing without a  
6 business license came from Linda A. Respondent further knew the complaint to the  
7 taxing authorities had resulted a citation issued against respondent on April 15, 1996. The  
8 citation caused respondent to pay his business taxes, which on April 30, 1996, were  
9 delinquent for the five (5) previous years. This delinquent period included the period  
10 "evaluating" and "mediating" Linda A. The aforementioned statement and attached  
11 exhibit "A" were made to deceive the Board and to falsely attack the accuracy and  
12 credibility of complaining witness, Linda A.

### 13 THIRD CAUSE FOR DISCIPLINE

#### 14 (Incompetence)

15 7. Respondent has been incompetent in the practice of his profession, in  
16 violation of Code section 2960, subdivision (p), as more particularly set forth hereinafter:

17 A. Complainant realleges paragraphs 4 and 5 and 6 in their entirety at  
18 this point.

19 B. Respondent committed acts or omissions demonstrating a lack of  
20 knowledge or ability to practice the profession of psychology in this state.

### 21 FOURTH CAUSE FOR DISCIPLINE

#### 22 (Repeated Negligent Acts)

23 8. Respondent has been repeatedly negligent in the practice of his profession,  
24 in violation of Code section 2960, subdivision (r), as more particularly set forth in paragraphs 4,  
25 5 and 6, above.

26 ///

27 ///

28 ///

FIFTH CAUSE FOR DISCIPLINE

(Gross Negligence)

Patient: Anna R. (aka Anna K.)

9. Respondent Donald K. Smith, Ph.D., is subject to disciplinary action on account of the following:

A. On or about 1994, in a matter before the Superior Court of the State of California for the County of Orange, Case No. 94D00678, the court ordered a joint legal child custody arrangement where under Anna R. had physical custody of their minor child David R., and Mr. R. had every other weekend and Wednesday visitations. Mr. and Mrs. R. had married in July of 1988, separated in December of 1993 and dissolved their marriage in May of 1996. From their marriage a child, David R., was born on October 10, 1990. Mr. R. got remarried to Barbara R. (described as "Mrs. R") on October 26, 1997, which union did not produce any children.

B. By stipulation and court order dated March 11, 1998, Respondent was appointed to conduct a "move away" custody evaluation, pursuant to Evidence Code section 730. At this time Anna R. (who respondent describes in his reports as "Ms. R") was seeking an order allowing her to move to Philadelphia with the minor, David R., who was then 7 years old.

C. Between March 17, 1998 and April 9, 1998, respondent saw Anna R., her mother (Harmke K.), Mr. and Mrs. R. and the minor, David R., individually and in various combinations, on a total of 13 occasions, in furtherance of the Evidence Code section 730 "move-away" evaluation. During these office visits, respondent conducted clinical intake, observation, interviews, and psychological testing.

D. On or about May 8, 1998, respondent submitted a 40-page letter report to the court. The report submitted the results of respondent's section 730 evaluation regarding the custody of David R.

10. Respondent has been grossly negligent in the practice of his profession, in violation of Code section 296, subdivision (j), and more particularly set forth hereinafter:



1 A. Complainant re-alleges paragraph 9 in it's entirety at this point.

2 B. Respondent failed to maintain test security by leaving forensic  
3 evaluatees in the office lone to complete psychological testing when no professional staff  
4 was present to monitor.

5 C. In making professional recommendations in this child  
6 custody evaluation, respondent misused psychological tests in their administration,  
7 interpretation and weight.

8 D. Respondent misused the Bender Gestalt Test in this child  
9 custody evaluation, as a personality measure.

10 E. Respondent failed to consider substance abuse/dependence as a  
11 factor in determining professional recommendations as to the best interest of the child in  
12 a custody evaluation.

13 F. Respondent submitted an evaluation report to the court which was  
14 laced with disparaging, pejorative, and prejudicial comments about Anna R.; and did so  
15 without foundation, thereby prejudicing her case before the court.

16 **SIXTH CAUSE FOR DISCIPLINE**

17 (Incompetence)

18 11. Respondent has been incompetent in the practice of his profession, in  
19 violation of Code section 2960, subdivision (p), as more particularly set forth in paragraphs 9 and  
20 10, above.:

21 **SEVENTH CAUSE FOR DISCIPLINE**

22 (Repeated Negligent Acts)

23 12. Respondent has been repeatedly negligent in the practice of his profession,  
24 in violation of Code section 2960, subdivision (r), as more particularly set forth hereinafter:

25 A. Complainant re-alleges paragraph 9 in it's entirety at this point.

26 **MATTERS IN AGGRAVATION**

27 13. At all times herein alleged Respondent had actual knowledge of his prior  
28 misconduct which resulted in the charging of a prior Accusation NO: W-2, a true and correct

1 copy of which is attached hereto and marked Exhibit "A". In resolution of the allegations in  
2 Exhibit "A" respondent entered into a Letter of Understanding, a true and correct copy of which  
3 is attached hereto and marked Exhibit "B". Said Letter of Understanding is part of respondent's  
4 record file and remained open to the public during the events alleged in this First Amended  
5 Accusation.

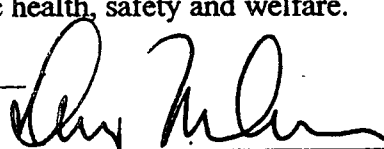
6 14. The gravity of the respondent's conduct towards and statements to those  
7 being evaluated and the representations to the court are increasing, with serious emotional and  
8 financial impact, and are not supported by any objective professional view of the psychological  
9 tests or facts known or that should be known to the respondent or within the standard of care in  
10 the state of California.

11 PRAYER

12 WHEREFORE, complainant requests that a hearing be held on the matters  
13 alleged herein, and that following said hearing, the Board issue a decision:

- 14 1. Revoking, suspending, or otherwise imposing discipline upon  
15 Psychologist's License Number PSY 11278 issued to respondent Donald  
16 K. Smith, Ph.D.;
- 17 2. Directing respondent, Donald K. Smith, Ph.D., to pay to the Board a  
18 reasonable sum for its investigative and enforcement costs of this action,  
19 and the costs of monitoring probation if the administrative disciplinary  
20 decision imposes terms of probation; and,
- 21 3. Taking such other and further action as the Board deems appropriate to  
22 protect the public health, safety and welfare.

23 DATED: 9-13-2000

24   
25 DOUGLAS MACCARTEE  
26 Deputy Attorney General

27 For THOMAS S. O'CONNER  
28 Executive Officer, Board of Psychology  
Department of Consumer Affairs  
State of California  
Complainant

**EXHIBIT A**  
(Accusation)

1 DANIEL E. LUNGREN, Attorney General  
2 of the State of California  
3 SHERRY L. LEDAKIS,  
4 Deputy Attorney General, State Bar No. 131767  
5 Department of Justice  
6 110 West A Street, Suite 1100  
7 Post Office Box 85266  
8 San Diego, California 92186-5266  
9 Telephone: (619) 645-2078

10 Attorneys for Complainant

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
BEFORE THE  
BOARD OF BEHAVIORAL SCIENCE EXAMINERS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

12 In the Matter of the Accusation ) NO. ME-42  
13 Against: )  
14 DONALD KENNETH SMITH, PH.D. ) ACCUSATION  
15 333 City Blvd. West, Ste. 1235 )  
16 Orange, CA 92668 )  
17 MFCC License No. 13577 and )  
18 LEP License No. 738 )  
19 Respondent. )

20 Complainant Kathleen Callanan, who as cause for  
21 disciplinary action, alleges:

22 PARTIES

23 1. Complainant is the Executive Officer of the Board  
24 of Behavioral Science Examiners ("Board") and makes and files  
25 this accusation solely in her official capacity.

26 License Status

27 2. On or about January 10, 1979, Marriage, Family, and  
Child Counselor License No. 13577 was issued by the Board to  
Donald Kenneth Smith, Ph.D. ("respondent"), and on or about June

1 5, 1978, Licensed Educational Psychologist License was issued to  
2 respondent. At all times relevant herein, said Licenses were,  
3 and currently are, in full force and effect.

4 JURISDICTION

5 3. This accusation is made in reference to the  
6 following statutes of the California Business and Professions  
7 Code ("Code"):

8 a. Section 4982 provides that the Board may suspend or  
9 revoke the license of any Marriage, Family and Child Counselor  
10 who has been guilty of unprofessional conduct which includes but  
11 is not limited to:

12 (d) Gross negligence or incompetence in the  
13 performance of marriage, family, and child counseling.

14 b. Section 4986.70 provides that the Board may suspend  
15 or revoke the license of any [Licensed Educational Psychologist]  
16 if he or she has been guilty of unprofessional conduct which has  
17 endangered or is likely to endanger the health, welfare, or  
18 safety of the public. Such unprofessional conduct shall include:

19 (f) Committing a dishonest or fraudulent act as a  
20 licensed educational psychologist resulting in substantial injury  
21 to another.

22 c. This accusation is made in reference to the  
23 following regulations of the California Code of Regulations  
24 (Regulation), Title 16:

25 a. Section 1858 provides that the Board may suspend or  
26 revoke the license of a Licensed Educational Psychologist who:

27 ///

1 (d) Intentionally or recklessly causes physical or  
2 emotional harm to a client.

3 4. Costs.

4 a. Section 4990.17 of the Business and Professions  
5 Code provides that in any order issued in resolution of a  
6 disciplinary proceeding before the board, the board may request  
7 the administrative law judge to direct a licentiate found to have  
8 committed a violation or violations of 4982 or 4986.70 to pay to  
9 the board a sum not to exceed the actual and reasonable costs of  
10 the investigation and prosecution of the case.

11 FACTS

12 5. Patient - M.G.

13 a. In July of 1992, Mrs. M.Y. and her husband D. Y.,  
14 Ph.D., filed a complaint with the Board concerning Smith's  
15 treatment of their 8 year old son, M.G. When M.G. was born, Mrs.  
16 Y. was married to M.G.'s father, L.G. When M.G. was two years  
17 old, Mrs. Y. and Mr. G. divorced and both parents were awarded  
18 joint custody with Mrs. Y. being awarded primary physical  
19 custody.

20 b. In approximately August of 1985, M.G.'s mother  
21 married Mr. Y. In 1986, Mrs. Y. petitioned the court to allow  
22 her to move to Rochester, New York because of her husband's  
23 employment.

24 c. The court appointed Benedict Cooley, Ph.D., to  
25 perform a custody evaluation prior to the move. Dr. Cooley  
26 recommended that primary custody remain with Mrs. Y. despite the  
27 move with extensive visitation granted to the father.

1 d. The Y. family moved to New York with M.G. who began  
2 to display behavioral problems in 1989. He was evaluated by a  
3 variety of professionals as having Attention Deficit  
4 Hyperactivity Disorder (ADHD). M.G. was medicated with Ritalin,  
5 and began receiving psychotherapy.

6 e. In August of 1990, the Y. family moved to Lexington  
7 Kentucky, again because of Dr. Y.'s work.

8 f. M.G. was evaluated at the University of Kentucky  
9 Medical Center by a physician who substantiated the ADHD  
10 diagnosis and who also diagnosed Tourette's disease.

11 g. In the summer of 1991, while M.G. was visiting his  
12 father, Mr. G. hired respondent Smith, via Mr. G.'s attorney, to  
13 evaluate M.G.'s psychological status. Smith's report to the  
14 attorney indicates interviews with Mr. and Mrs. G., M.G., M.G.'s  
15 stepbrother, and a psychoeducational evaluation of M.G.

16 h. Smith's written report to the attorney is in the  
17 format of a custody evaluation. Smith did not obtain Mrs. Y.'s  
18 consent to perform the custody/psychoeducational evaluation of  
19 M.G.

20 i. Smith did not interview Mrs. Y. nor did he obtain  
21 all medical/school records from New York or Kentucky on M.G.  
22 prior to writing his evaluation.

23 j. Smith's report contained damaging statements  
24 concerning Dr. and Mrs. Y. and their treatment of M.G.

25 k. Based upon the report written by Smith, Mr. G.'s  
26 attorney filed an ex-parte petition for a temporary restraining  
27 order against returning M.G. to the Y.'s custody.

1           1.     Smith's conduct as alleged above constitutes gross  
2 negligence as follows:

3           (1)    Smith failed to obtain Mrs. Y.'s consent prior to  
4 evaluating her son;

5           (2)    Smith failed to thoroughly and carefully perform  
6 psychological evaluations of the child and each parent/family  
7 member involved prior to submitting a report with the  
8 attorney/court that included negative statements regarding the  
9 mother and her family;

10          (3)    Smith failed to obtain and carefully evaluate  
11 M.G.'s medical records and school records prior to submitting a  
12 report with the attorney/court that included negative statements  
13 regarding the mothers' parenting skills and provisions for M.G.'s  
14 special needs.

15           6.    Patient - D.C.

16          a.    Mrs. C., mother of D.C., filed a consumer complaint  
17 against Smith on October 20, 1992 concerning his treatment of her  
18 son, D.C.

19          b.    Mr. and Mrs. C. were going through a divorce in  
20 which a custody dispute involving their son, D.C. arose.

21          c.    In August of 1991, the court ordered a complete  
22 custody evaluation of the family.

23          d.    Based upon this evaluation, the court awarded joint  
24 custody to both parents with primary physical custody awarded to  
25 the mother. This order went into effect on December 18, 1991.

26        ///

27        ///



1 e. A follow-up evaluation was completed six months  
2 later with continuation of the original court order regarding  
3 custody.

4 f. Mrs. C. contends that Mr. C. was unwilling to  
5 accept the Court's decision and therefore, he contacted Smith.

6 g. Mr. C. told Mrs. C. that he contacted Smith in  
7 order to obtain adjustment counseling for himself, D.C., and  
8 their two teenaged daughters.

9 h. Mrs. C. was not aware that Smith was performing a  
10 custody evaluation of D.C. until he wrote her attorney and asked  
11 for Mrs. C.'s participation in his evaluation of the family.

12 i. Mrs. C.'s attorney told Smith in a letter that both  
13 parents had stipulated to a custody evaluation performed by Dr.  
14 D. and G. B. and that Smith was seeing D.C. without the mother's  
15 permission.

16 j. Smith's notes concerning D.C. indicate a custodial  
17 evaluation.

18 k. Smith's treatment of D.C. constitutes gross  
19 negligence as follows:

20 (1) Smith failed to obtain Mrs. C.'s consent to  
21 treat/evaluate D.C.;

22 (2) Smith began a custody evaluation without including  
23 the mother;

24 (3) Smith proceeded with the evaluation without court  
25 mandate;

26 (4) Smith contacted Mrs. C.'s attorney only after he  
27 had begun the evaluation; and

1 (5) Smith created unnecessary emotional conflict for  
2 the child by re-opening the custodial issues.

3 7. As a result of the conduct described in paragraphs  
4 5a-5l, and 6a-6k above, Smith is in violation of Code section  
5 4982 (d), 4986.70, and Regulation 1858.

6 PRAYER

7 WHEREFORE, complainant requests that the Board hold a  
8 hearing on the matters alleged herein, and that following said  
9 hearing, the Board issue a decision:

10 1. Revoking or suspending MFCC License Number 13577  
11 and LEP License Number 738, heretofore issued to respondent  
12 Donald Kenneth Smith, Ph.D.;

13 2. Directing respondent Donald Kenneth Smith, Ph.D.  
14 to pay to the Board a reasonable sum for its investigative and  
15 enforcement costs of this action; and

16 3. Taking such other and further action as the Board  
17 deems appropriate to protect the public health, safety and  
18 welfare.

19 DATED: 5/18/94

20  
21 

22 Kathleen Callanan  
23 Executive Officer  
24 Board of Behavioral Science Examiners  
25 Department of Consumer Affairs  
26 State of California

27 Complainant

**EXHIBIT B**  
(Letter of Understanding)



## BOARD OF BEHAVIORAL SCIENCE EXAMINERS

400 R STREET, SUITE 3150, SACRAMENTO, CA 95814

TELEPHONE: (916) 445-4933

TDD: (916) 322-1700



SENT BY OVERNIGHT MAIL

July 18, 1994

Donald Smith, Ph.D.  
c/o Pamela Ann Thatcher, Esq.  
2280 Wardlow Circle, Suite 230  
Corona, CA 91720

RE: Letter of Understanding In the Matter of the Accusation  
Against: Donald Smith, Ph.D., MFC 13577, LEP 738,  
Case No. ME-42

Dear Dr. Smith:

On May 18, 1994, acting as Executive Officer of the Board of Behavioral Science Examiners, I filed an Accusation against you in connection with two child custody matters. The Accusation alleged you engaged in misconduct including: 1) failing to thoroughly evaluate the child and each parent prior to preparing a report relating to, or to be used in connection with, custody; 2) failing to obtain and evaluate medical and school records prior to preparing a report relating to, or to be used in connection with, custody; and 3) failing to interview and carefully evaluate a person prior to preparing a report that expresses an opinion about that person.

While you specifically deny having engaged in such conduct, you agree that such conduct would be unprofessional and that it is a departure from standard of care to: 1) fail to thoroughly and carefully evaluate a child, each parent and other relevant family members prior to preparing a report that, directly or indirectly, relates to or will be used in connection with custody matters; 2) fail to obtain all relevant records including medical, mental health and school records prior to preparing a report that, directly or indirectly, relates to or will be used in connection with custody matters; 3) make any statement of fact or any statement that could reasonably be viewed as a statement of fact without obtaining all information necessary to establish such fact; and 4) fail to interview and carefully evaluate a person prior to preparing a report that, directly or indirectly, expresses or could be viewed as expressing an opinion about that person.

In addition, you agree that this Letter of Understanding will be made a part of your file and will be a public document for two years from the date of this letter.

Donald Smith, Ph.D.

July 18, 1994

Page two

In light of the foregoing, and consistent with the Board's mandate to protect the public, you are issued this Letter of Understanding. Upon your acceptance of this Letter of Understanding and upon payment to the Board of \$1,500 for its costs of investigation in this matter, I agree to withdraw the Accusation.



Kathleen Callanan, Executive Officer  
Board of Behavioral Science Examiners

I agree to accept this letter of understanding \_\_\_\_yes \_\_\_\_no.

\_\_\_\_\_  
Donald Smith, Ph.D.

\_\_\_\_\_  
Date